In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-328

WILLIAM O. PARTEN AND LEWIS LYNN WHITMIRE, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Western District of Texas, petitioners were convicted of having knowingly and willfully made a false statement on Customs Form 6059-B by giving false identities, in violation of 18 U.S.C. 1001. The court of appeals affirmed (Pet. App. A) and thereafter denied a petition for rehearing on July 19, 1972. The petition for a writ of certiorari was not

filed until August 25, 1972, and is out of time under Rule 22(2) of the Rules of this Court. There is, in any event, no reason to grant the writ.

The facts are not in dispute and are set forth in the opinion below (Pet. App. 2a). Upon petitioners' arrival at San Antonio, Texas, after a flight from Mexico, they were each given Customs Form 6059-B, which states that a person may make an oral declaration if foreign purchases were less than $100. Pursuant to local practice at the San Antonio port of entry, petitioners were required, like all other entrants, to sign the form. This requirement is imposed by Customs "as a first line of defense to keep contraband and narcotics from entering the United States by identifying suspected or wanted individuals" and thus assisting Customs in deciding which entrants should be subjected to more thorough examination (Pet. App. 3a-4a). Petitioners, who were on probation following a conviction in Utah involving 130 pounds of marihuana, filled out the form using fictitious names. (They also had forged credentials with them to support the false identities.) Their true identities were learned by a more thorough check following the discovery of traces of marihuana and marihuana seeds in their luggage (Pet. 5).

Petitioners contend that the execution of Form 6059-B was not a matter "within the jurisdiction" of the Bureau of Customs in the case of persons eligible to make an oral declaration and that, even if it was, knowledge of their names was not material to the exercise of that jurisdiction. Thus, they say, their conduct was not covered by 18 U.S.C. 1001. But the ex-

ecution of a standard customs declaration form is manifestly within the jurisdiction of the Bureau of Customs, and the materiality of securing the names of entrants is evidenced by the use to which that information is put, which relates directly to the exercise of the customs inspection function.[1] Petitioners' contention that they could not properly be required to execute the form, even if correct, is not legally material, since the prohibition extends to false statements even if no statement is required to be made by law or regulation. *Neely* v. *United States*, 300 F. 2d 67 (C.A. 9), certiorari denied, 369 U.S. 864. As this Court stated in *Bryson* v. *United States*, 396 U.S. 64, 72:

> * * * [I]t cannot be thought that as a general principle of our law a citizen has a privilege to answer fraudulently a question that the Government should not have asked. Our legal system provides methods for challenging the Government's right to ask questions—lying is not one of them. A citizen may decline to answer the question, or answer it honestly, but he cannot with impunity knowingly and willfully answer with a falsehood. [Footnotes omitted.]

Finally, petitioners rely on an asserted conflict between the decision below and that in *Friedman* v. *United States*, 374 F. 2d 363 (C.A. 8). *Friedman* held that a false statement given to an F.B.I. agent alleging violations of the Civil Rights Laws would

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[1] The fact, stressed by petitioners, that the ascertainment of the names of entrants may also benefit the Immigration and Naturalization Service is of no importance in view of the legitimate customs objective served by the inquiry.

not be considered to satisfy the "jurisdiction" requirement of the statute because the responsibility of the F.B.I. is purely investigative, and the statute was intended to apply to the exercise of regulatory and adjudicative power. Whatever the correctness of that ruling, it does not apply to the exercise by the Bureau of Customs of its function of regulating the flow of goods into the United States. Moreover, the result in *Friedman* was influenced by "the important social policy that is served by an open line of communication between the general public and law enforcement agencies." *Id.* at 369. No such policy is operative in the instant case.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

SEPTEMBER 1972.

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